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Paper No. 13  
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sony Kabushiki Kaisha

Serial No. 75/425,823

Robert B. G. Horowitz of Cooper and Dunham for Sony  
Kabushiki Kaisha.

Michele-Lynn Swain, Trademark Examining Attorney, Law  
Office 103 (Michael A. Szoke, Managing Attorney).

Before Hanak, Holtzman and Rogers, Administrative Trademark  
Judges.

Opinion by Rogers, Administrative Trademark Judge:

Sony Kabushiki Kaisha has filed an application to  
register NEWS CACHE as a mark for goods identified as  
"television program serving system comprised of personal  
computers, peripherals therefor, computer software for  
recording, editing and supplying of television programs,  
and television program servers."<sup>1</sup> Registration has been

<sup>1</sup> Serial No. 75/425,823, filed January 29, 1998, based upon an  
allegation of a bona fide intention to use such term in commerce.

refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used on or in connection with applicant's goods, the mark will be merely descriptive of them.

When the Examining Attorney made the refusal final, applicant appealed. Briefs were filed, but an oral hearing was not requested. We affirm the refusal of registration.

The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods. In re Merrill, Lynch, Pierce, Fenner, and Smith Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). To meet this burden, the Examining Attorney has made of record definitions from general dictionaries for the words "news" and "cache," and definitions from technical sources or specialized computer dictionaries for "cache."<sup>2</sup> The Examining Attorney has also made of record numerous excerpts retrieved from the NEXIS computerized database of periodicals, each of which includes some combination of the words "news," "cache" or "caching," "server" or "computer" or plural forms thereof.

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<sup>2</sup> Some of these definitions were retrieved from "on-line" sources and the record does not always reveal exactly how they were retrieved. Nonetheless, although applicant disputes which definition of cache would readily come to mind for prospective purchasers of its goods, applicant has not objected to any of the definitions because of their source. Accordingly, we consider all this evidence properly of record.

The term "news" is defined as "[i]nformation about recent events or happenings, especially as reported by newspapers, periodicals, radio, or television." Applicant has not challenged the Examining Attorney's reliance on this particular definition. Further, applicant has not contested the Examining Attorney's contention that "television programs," i.e., the content recorded, edited and served by applicant's serving system, includes news, and would, therefore, be descriptive when used in connection with applicant's goods.

In contrast, applicant has contested the definitions of "cache" on which the Examining Attorney relies. Relevant dictionary definitions of the term made of record by the Examining Attorney include "computer memory with a very short access time used for storage of frequently used instructions or data," and "a special memory subsystem in which frequently used data values are duplicated for quick access." In addition, the Internet website [www.whatis.com](http://www.whatis.com), lists the following information in its definition of cache:

A cache (pronounced CASH) is a place to store something more or less temporarily. Web pages you request are stored in your browser's cache directly on your hard disk. That way, when you return to a page you've recently looked at, the browser can get it from the cache rather than the original server, saving you time and the network the burden of some additional traffic. ...

Computers include caches at several levels of operation, including cache memory and a disk cache. Caching can also be implemented for Internet content by distributing it to multiple servers that are periodically refreshed. ...

Altogether, we are aware of these types of caches:

- International, national, regional, organizational and other "macro" caches to which highly popular information can be distributed and periodically updated and from which most users would obtain information.
- Local server caches (for example, corporate LAN servers or access provider servers that cache frequently accessed files). This is similar to the previous idea, except that the decision of what data to cache may be entirely local.

[remainder omitted]

Applicant contends that these definitions "do not pertain to applicant's goods" and it is more appropriate to consider "cache" to be "a hiding place for concealing or preserving provisions or implements, and a secure place of storage." Applicant contends that this definition is what the "average purchaser of the applied for goods" would think of when confronted with the term cache.

It is, of course, well settled that the question whether a term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being

used on or in connection with those goods and the possible significance that the term would have to the average purchaser because of the manner of its use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979) and In re Recovery, 196 USPQ 830 (TTAB 1977). Apart from the referenced definitions, we have a wide variety of NEXIS excerpts that aid our determination of the likely perception of cache, as that term would be used in conjunction with applicant's identified goods.

The NEXIS excerpts discuss a wide range of caching products, caching engines, and caching servers. The excerpts also reveal that there are news servers and that news traffic and the content of news databases is routinely cached by such products to facilitate later access and use:

...Most push products today supply preconfigured channels of general-interest news and information. To access this content, the push server caches the channel information from the Internet locally, acting as a proxy server so that network clients don't need to access the Internet for every update request. ...

--*PC Magazine* (June 10, 1997).

...This proxy caching news server can combine multiple news servers to look like one. ...

--*Internet World* (June 9, 1997).

...PointCast's intranet caching server, I-Server, and First! Intranet are tied to a comprehensive set of news sources that can fulfill most any business news interest. ...

--*Network Computing* (April 1, 1997).

...I-Server also condenses the stream of public news and information from the PointCast Network using intelligent caching technology. ...  
--*INTERNET WEEK* (March 10, 1997).

In addition, two of the NEXIS excerpts discuss use of caching products for video applications:

Traffic Server supports Cache HTTP 1.1 and is one of the only caching products that supports audio, streaming video, Usenet news and Network News Transfer Protocol content. ...  
--*Network World* (April 26, 1999).

HEADLINE: NewsMaker lands cable sales;  
Telenoticias and Time Warner choose StarDrive automation system  
BODY: ..."The nice thing about StarDrive is that it's transparent to the user, so the producers won't see any change," Neugeboren says.

The network considered using a video server as a cache to the LMS, Neugeboren says, but decided that a cache architecture didn't provide enough versatility for news: "We like the flexibility of changing an event to air--right now with tape, we change up to 90 seconds to air. This will give us the flexibility of changing the playlist very quickly, with a window of 10 to 15 seconds."...  
--*Broadcasting & Cable* (November 4, 1996).<sup>3</sup>

Though applicant has provided no information about the prospective purchasers of its goods, its system does not appear to be an item that will be targeted to a home

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<sup>3</sup> We would have preferred a fuller copy of the *Broadcasting & Cable* article, rather than an excerpt. Nonetheless, it is clear from the context of the excerpt that cable television broadcasters have various options available to them for storing, editing and playing or serving video, including caching products. That the companies discussed in the article apparently chose to

computer user. Rather, it appears to be a commercial item intended for Internet Service Providers, broadcasters, or computer network administrators. In this context, we find entirely unpersuasive applicant's argument that prospective purchasers of a "television program serving system" which includes computers, peripherals, software and servers would perceive cache to mean a hiding place for provisions or implements. Such purchasers would clearly perceive cache to be a reference to a feature of applicant's system, i.e., that it caches television programs.

We conclude that both "news" and "cache" are descriptive terms when considered in conjunction with applicant's goods. Applicant, however, correctly notes that terms which, when considered individually, are descriptive of a product or service, nonetheless may be combined to create a trademark. Applicant further contends that its combination of the terms "news" and "cache" accomplishes this result. In support of its position, applicant argues that the absence of any NEXIS references for "news cache" is telling. We disagree, and find that the terms when combined are no less descriptive than the terms are individually, when considered in conjunction with

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use an alternative to "caching architecture" does not detract from the probative value of this evidence.

applicant's goods. See, e.g., In re Copytele Inc., 31 USPQ2d 1540 (TTAB 1994) (combination of SCREEN FAX PHONE held merely descriptive and without incongruity resulting from combination), and In re Lowrance Electronics, 14 USPQ2d 1251 (TTAB 1989) (generic terms COMPUTER and SONAR held just as generic and not incongruous when used in combination).

A proposed mark is considered merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-218 (CCPA 1978); see also In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985).

Contrary to applicant's argument, we find that prospective purchasers of applicant's television program serving system, if confronted with NEWS CACHE used in



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conjunction therewith, would, without need of thought, imagination or perception, be immediately apprised of a significant feature of applicant's goods, i.e., that it can cache news prior to serving it.

Decision: The refusal of registration is affirmed.